

Auctioneers selling on behalf of undisclosed principals are responsible for Retailers' Occupation Tax on the gross receipts from the sales. However, if auctioneers act on behalf of known or disclosed principals, the sale of tangible personal property is taxable to the principals and not the auctioneers if the principals are retailers of the tangible personal property being sold at the auction. See 86 Ill. Adm. Code 130.1915. (This is a GIL).

May 26, 1999

Dear Xxxxx:

This letter is in response to your letter dated April 22, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing to request a general information letter Code 1301915 and 1302170 part 2 and Jurisdiction questions ST97-0441. I called and receive these numbers from the office worker over the phone. The questions that I asked him were in regards to Auctions. I need information on sales tax regarding information on paying sales tax when an individual consigns lawn and garden or construction equipment on a Consignment Auction and when a Dealer consigns the same items on a Consignment Auction. I need to know who is responsible for charging and paying the sales tax. I would like you to look these numbers over and the information contained in the letters to see if it has the information to answer my questions.

Thanking you in advance for your effort and time spent on sending this information.

General Information Letter ST 97-0441-GIL explains general guidelines that auctioneers can apply to determine the Retailers' Occupation Tax (sales tax) responsibilities of the various parties in different auction situations. These guidelines are explained below.

The Department's rules regarding liability in auction situations are set forth at 86 Ill. Adm. Code 130.1915, enclosed, concerning Auctioneers and Agents. Generally, auctioneers acting on behalf of unknown or undisclosed principals are considered to be the owners of the tangible personal property that will be auctioned and are responsible for Retailers' Occupation Tax on the gross receipts from the sales. In these situations the auctioneers should register with the Department prior to making such sales.

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However, if auctioneers are acting on behalf of known or disclosed principals, the sale of the tangible personal property is taxable to the principal and not the auctioneer if the principal is a retailer of the tangible personal property being sold at the auction. A disclosed principal is one whose name and address are made known to the purchaser at or before the time of sale and whose name and address appear upon the books and records of the agent. If the tangible personal property sold at the auction is not tangible personal property that was customarily sold in business by the disclosed principal, then the sale is not taxable because this transaction is considered an occasional sale by an occasional seller, the disclosed principal. See the enclosed copy of 86 Ill. Adm. Code 130.110 concerning Occasional Sales.

If the sale of the tangible personal property is subject to Retailers' Occupation Tax, then the tax must be collected at the time of the sale. Please note that the party liable for the Retailers' Occupation Tax is also the party responsible for filing a sales tax return of the receipts from the sale.

The Department's regulations at 86 Ill. Adm. Code 130.2170 (copy enclosed), which you referenced in your letter, describe how the above stated principles work in regard to warehousemen.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.